

110TH CONGRESS
1ST SESSION

H. R. 1401

To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2007

Mr. THOMPSON of Mississippi (for himself, Mr. KING of New York, Ms. JACKSON-LEE of Texas, Mr. DANIEL E. LUNGREN of California, Ms. LORETTA SANCHEZ of California, Mr. MARKEY, Mr. DICKS, Ms. HARMAN, Mrs. LOWEY, Ms. NORTON, Ms. ZOE LOFGREN of California, Mrs. CHRISTENSEN, Mr. ETHERIDGE, Mr. LANGEVIN, Mr. CUELLAR, Mr. CARNEY, Ms. CLARKE, Mr. AL GREEN of Texas, and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Rail and Public Transportation Security Act of 2007”.

1 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.
 Sec. 3. National strategy for rail and public transportation security.
 Sec. 4. Assignment of providers of covered transportation to risk-based tiers.
 Sec. 5. Rail and public transportation assessments and plans.
 Sec. 6. Information sharing plan.
 Sec. 7. Rail security assistance.
 Sec. 8. Public transportation security assistance.
 Sec. 9. Over-the-road bus security assistance.
 Sec. 10. Fire and life safety improvements.
 Sec. 11. Security training program.
 Sec. 12. Security exercises.
 Sec. 13. Security research and development.
 Sec. 14. Whistleblower protections.
 Sec. 15. Increase in surface transportation security inspectors.
 Sec. 16. National domestic preparedness consortium.
 Sec. 17. Authorization of Visible Intermodal Protection Response Teams.
 Sec. 18. National Transportation Security Center of Excellence.
 Sec. 19. TSA personnel limitations.
 Sec. 20. Homeland security grants.
 Sec. 21. Threat assessment screening.
 Sec. 22. Background checks for covered individuals.
 Sec. 23. Penalties.

2 **SEC. 2. DEFINITIONS.**

3 In this Act, the following definitions apply:

- 4 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
 5 **TEES.**—The term “appropriate congressional com-
 6 mittees” has the meaning that term has in section
 7 2 of the Homeland Security Act of 2002 (6 U.S.C.
 8 101) and includes the Committees on Homeland Se-
 9 curity and Transportation and Infrastructure of the
 10 House of Representatives and the Committees on
 11 Homeland Security and Governmental Affairs and
 12 Commerce, Science, and Transportation of the Sen-
 13 ate.

1 (2) APPROPRIATE STAKEHOLDERS.—The term
2 “appropriate stakeholders” means—

3 (A) providers of covered transportation;

4 (B) organizations representing providers of
5 covered transportation;

6 (C) nonprofit employee labor organizations
7 representing railroad, public transportation, or
8 over-the-road bus workers;

9 (D) shippers of hazardous material;

10 (E) manufacturers of railroad and transit
11 cars;

12 (F) State departments of transportation;

13 (G) public safety officials;

14 (H) law enforcement and fire service offi-
15 cials; and

16 (I) other relevant persons.

17 (3) COVERED TRANSPORTATION.—The term
18 “covered transportation” means transportation pro-
19 vided by a railroad carrier, a provider of public
20 transportation, or an over-the-road bus.

21 (4) DEPARTMENT.—The term “Department”
22 means the Department of Homeland Security.

23 (5) DESIGNATED RECIPIENT.—The term “des-
24 ignated recipient” has the meaning that the term

1 has in section 5307(a) of title 49, United States
2 Code.

3 (6) PROVIDER OF COVERED TRANSPORTATION.—The term “provider of covered transportation” means—

6 (A) with respect to transportation provided
7 by a railroad carrier, the railroad carrier;

8 (B) with respect to public transportation,
9 the public transportation designated recipient
10 providing the transportation; and

11 (C) with respect to transportation provided
12 by an over-the-road bus, the private operator.

13 (7) OVER-THE-ROAD BUS.—The term “over-the-
14 road bus” means a bus characterized by an elevated
15 passenger deck located over a baggage compartment.

16 (8) PUBLIC TRANSPORTATION.—The term
17 “public transportation” has the meaning that term
18 has in section 5302(a) of title 49, United States
19 Code.

20 (9) RAILROAD.—The term “railroad” has the
21 meaning that term has in section 20102 of title 49,
22 United States Code.

23 (10) RAILROAD CARRIER.—The term “railroad
24 carrier” has the meaning that term has in section
25 20102 of title 49, United States Code.

1 (11) SECRETARY.—The term “Secretary”
2 means the Secretary of Homeland Security.

3 (12) STATE.—The term “State” means any one
4 of the 50 States, the District of Columbia, Puerto
5 Rico, the Northern Mariana Islands, the Virgin Is-
6 lands, Guam, American Samoa, and any other terri-
7 tory or possession of the United States.

8 (13) TERRORISM.—The term “terrorism” has
9 the meaning that term has in section 2 of the Home-
10 land Security Act of 2002 (6 U.S.C. 101).

11 (14) TRANSPORTATION.—The term “transporta-
12 tion”, as used with respect to an over-the-road-
13 bus, means the movement of passengers or property
14 by an over-the-road-bus.

15 (A) in the jurisdiction of the United States
16 between a place in a State and a place outside
17 the State (including a place outside the United
18 States); or

19 (B) in a State that affects trade, traffic,
20 and transportation described in subparagraph
21 (A).

22 (15) UNITED STATES.—The term “United
23 States” means the 50 States, the District of Colum-
24 bia, Puerto Rico, the Northern Mariana Islands, the

1 Virgin Islands, Guam, American Samoa, and any
2 other territory or possession of the United States.

3 **SEC. 3. NATIONAL STRATEGY FOR RAIL AND PUBLIC**
4 **TRANSPORTATION SECURITY.**

5 (a) MODAL PLAN.—Not later than 6 months after
6 the date of enactment of this Act, the Secretary, in con-
7 sultation with the Secretary of Transportation, shall de-
8 velop and implement the modal plan for covered transpor-
9 tation as required by section 114(t)(1)(B) of title 49,
10 United States Code. The modal plan shall be entitled the
11 “National Strategy for Rail and Public Transportation Se-
12 curity” and shall include, at a minimum—

13 (1) a description of the roles, responsibilities,
14 and authorities of Federal, State, and local agencies,
15 government sponsored entities, tribal governments,
16 and appropriate stakeholders under the plan;

17 (2) identification of, and a plan to address,
18 gaps and unnecessary overlaps in the roles, respon-
19 sibilities, and authorities described in paragraph (1);

20 (3) a methodology for how the Department will
21 work with the entities described in paragraph (1),
22 and make use of existing Federal expertise within
23 the Department, the Department of Transportation,
24 and other appropriate agencies;

1 (4) a process for expediting security clearances
2 to facilitate intelligence and information sharing
3 with the entities described in paragraph (1);

4 (5) a description of—

5 (A) how the Department has reviewed ter-
6 rorist attacks on covered transportation
7 throughout the world in the last 25 years;

8 (B) the lessons learned from those reviews;

9 and

10 (C) how those lessons are being used in
11 current and future efforts to secure covered
12 transportation;

13 (6) a strategy and timeline for the Department,
14 the Department of Transportation, other appro-
15 priate Federal agencies and private entities to re-
16 search and develop new technologies for securing
17 covered transportation;

18 (7) measurable goals, including objectives,
19 mechanisms, and a schedule for enhancing the secu-
20 rity of covered transportation;

21 (8) a framework for resuming the operation of
22 covered transportation in the event of an act of ter-
23 rorism and prioritizing resumption of such oper-
24 ations;

1 (9) a description of current and future public
2 outreach and educational initiatives designed to in-
3 form the public on how to prevent, prepare for, and
4 respond to a terrorist attack on covered transpor-
5 tation; and

6 (10) a process for coordinating covered trans-
7 portation security strategies and plans, including the
8 National Infrastructure Protection Plan required by
9 Homeland Security Presidential Directive 7; Execu-
10 tive Order: Strengthening Surface Transportation
11 Security dated December 5, 2006; the Memorandum
12 of Understanding between the Department and the
13 Department of Transportation on Roles and Respon-
14 sibilities dated September 28, 2004; the Annex to
15 the Memorandum of Understanding between the De-
16 partment and the Department of Transportation on
17 Roles and Responsibilities concerning railroad secu-
18 rity dated September 28, 2006, and the Annex exe-
19 cuted under section 3028(b) of the Safe, Account-
20 able, Flexible, and Efficient Transportation Equity
21 Act: A Legacy for Users (49 U.S.C. 5321 note; 119
22 Stat. 1624).

23 (b) ADEQUACY OF EXISTING PLANS AND STRATE-
24 GIES.—Nothing in this section shall prevent the Secretary
25 from using existing plans and strategies, including those

1 developed or implemented pursuant to section 114(t) of
2 title 49, United States Code, or Homeland Security Presi-
3 dential Directive–7, in meeting the requirements of sub-
4 section (a).

5 **SEC. 4. ASSIGNMENT OF PROVIDERS OF COVERED TRANS-**
6 **PORTATION TO RISK-BASED TIERS.**

7 (a) ASSIGNMENT.—The Secretary shall assign each
8 provider of covered transportation to one of the not less
9 than three risk-based tiers established by the Secretary.

10 (b) PROVISION OF INFORMATION.—The Secretary
11 may request, and the provider of covered transportation
12 shall provide, information necessary for the Secretary to
13 assign a provider of covered transportation to the appro-
14 priate tier under subsection (a).

15 (c) NOTIFICATION.—Not later than 60 days after the
16 date a provider of covered transportation is assigned to
17 a tier under this section, the Secretary shall notify the
18 provider of the tier to which the provider is assigned and
19 the reasons for such assignment.

20 (d) HIGH- AND MEDIUM-RISK TIERS.—At least two
21 of the tiers established by the Secretary under this section
22 shall be tiers designated for high- and medium-risk pro-
23 viders of covered transportation.

1 **SEC. 5. RAIL AND PUBLIC TRANSPORTATION ASSESSMENTS**
2 **AND PLANS.**

3 (a) IN GENERAL.—Not later than 12 months after
4 the date of enactment of this Act, the Secretary, in con-
5 sultation with the Secretary of Transportation, shall issue
6 regulations that—

7 (1) require each provider of covered transpor-
8 tation assigned to a high- or medium-risk tier under
9 section 4—

10 (A) to conduct a vulnerability assessment
11 in accordance with subsections (b) and (c); and

12 (B) to prepare, submit to the Secretary for
13 approval, and implement a security plan in ac-
14 cordance with this section that addresses secu-
15 rity performance requirements under subsection
16 (f); and

17 (2) establish standards, protocols, and proce-
18 dures for vulnerability assessments under subsection
19 (c) and security plans under subsection (d) and for
20 developing and implementing such security plans.

21 (3) establish a security program for providers of
22 covered transportation not assigned to a high or me-
23 dium-risk tier under section 4, including a process
24 for providers to conduct vulnerability assessments
25 and prepare and implement security plans, as deter-
26 mined appropriate by the Secretary.

1 (b) DEADLINE FOR SUBMISSION.—Not later than 6
2 months after the date of issuance of the regulations under
3 subsection (a), the vulnerability assessments and security
4 plans required by such regulations for a provider of cov-
5 ered transportation assigned to a high- or medium-risk
6 tier shall be completed and submitted to the Secretary for
7 review and approval.

8 (c) VULNERABILITY ASSESSMENTS.—

9 (1) REQUIREMENTS.—The Secretary, in con-
10 sultation with the Secretary of Transportation, shall
11 provide technical assistance and guidance to pro-
12 viders of covered transportation in conducting vul-
13 nerability assessments under this section and shall
14 require that each vulnerability assessment of a pro-
15 vider of covered transportation assigned to a high-
16 or medium-risk tier under section 4 include, at a
17 minimum—

18 (A) identification and evaluation of critical
19 covered transportation assets and infrastruc-
20 tures of the provider, including platforms, sta-
21 tions, bus and intermodal terminals, tunnels,
22 bridges, switching and storage areas, and infor-
23 mation systems;

24 (B) identification of the threats to those
25 assets and infrastructures;

- 1 (C) identification of the security weak-
2 nesses of the covered transportation in—
- 3 (i) physical security;
 - 4 (ii) passenger and cargo security;
 - 5 (iii) programmable electronic devices,
6 computers, or other automated systems
7 which are used in providing the transpor-
8 tation;
 - 9 (iv) alarms, cameras, and other pro-
10 tection systems;
 - 11 (v) communications systems, including
12 dispatching services and mobile service
13 equipment systems, to provide access to
14 emergency services in underground fixed
15 guideway systems;
 - 16 (vi) utilities;
 - 17 (vii) emergency response planning;
 - 18 (viii) employee training; and
 - 19 (ix) such other matters as the Sec-
20 retary determines appropriate; and
- 21 (D) identification of redundant and backup
22 systems required to ensure the continued oper-
23 ations of critical elements of the covered trans-
24 portation in the event of an attack or other in-

1 cident, including disruption of commercial elec-
2 tric power or communications network.

3 (2) THREAT INFORMATION.—A provider of cov-
4 ered transportation conducting a vulnerability as-
5 sessment under this section shall incorporate in the
6 assessment any threat information provided by the
7 Secretary and other sources.

8 (d) SECURITY PLANS.—

9 (1) REQUIREMENTS.—The Secretary, in con-
10 sultation with the Secretary of Transportation, shall
11 provide technical assistance and guidance to pro-
12 viders of covered transportation in preparing and
13 implementing security plans under this section and
14 shall require that each security plan of each provider
15 of covered transportation assigned a high- or me-
16 dium-risk under section 4 include, at a minimum—

17 (A) identification of a security coordinator
18 having authority—

19 (i) to implement security actions
20 under the plan;

21 (ii) to coordinate security improve-
22 ments described in sections 7, 8, and 9;
23 and

1 (iii) to require immediate communica-
2 tions from appropriate Federal officials re-
3 garding covered transportation security;

4 (B) security measures to address the secu-
5 rity performance requirements of covered trans-
6 portation;

7 (C) plans for periodic exercises under sec-
8 tion 12 that include participation by local law
9 enforcement agencies and emergency responders
10 as appropriate;

11 (D) a list of needed capital and operational
12 improvements described in sections 7, 8, and 9;

13 (E) procedures to be implemented or used
14 by the provider in response to a terrorist at-
15 tack, including evacuation and passenger com-
16 munication plans;

17 (F) identification of steps taken with State
18 and local law enforcement agencies, emergency
19 responders, and Federal officials to coordinate
20 security measures and plans for response to a
21 terrorist attack;

22 (G) a strategy and timeline for conducting
23 training under section 11, including recurrent
24 training and periodic unannounced exercises for
25 employees of the provider to be carried out

1 under the plan to prevent, prepare for, or re-
2 spond to a terrorist attack;

3 (H) enhanced security measures to be
4 taken by the provider when the Secretary de-
5 clares a period of heightened security risk;

6 (I) plans for redundant and backup sys-
7 tems required to ensure the continued operation
8 of critical covered transportation elements of
9 the provider in the event of a terrorist attack
10 or other incident;

11 (J) plans for locating, including by covert
12 electronic devices, shipments of railroad cars
13 transporting extremely hazardous materials or
14 nuclear waste so that, if the assets are lost or
15 stolen, the provider and law enforcement au-
16 thorities may locate, track, and recover the as-
17 sets; and

18 (K) such other actions or procedures as
19 the Secretary determines are appropriate to ad-
20 dress the covered transportation security of the
21 provider to a terrorist attack.

22 (2) CONSISTENCY WITH OTHER PLANS.—The
23 Secretary, in consultation with the Secretary of
24 Transportation, shall ensure that each security plan
25 under this section is consistent with the require-

1 ments of the National Strategy for Rail and Public
2 Transportation Security described in section 3.

3 (e) PROVIDED BY SECRETARY.—The Secretary shall
4 provide, in a timely manner to the maximum extent prac-
5 ticable under applicable authority and in the interest of
6 national security, to the provider of the covered transpor-
7 tation threat information that is relevant to the provider
8 when preparing and submitting vulnerabilities and secu-
9 rity plans, including an assessment of the most likely
10 method that could be used by terrorists to exploit weak-
11 nesses in the covered transportation security and the like-
12 lihood of success by such terrorists.

13 (f) SECURITY PERFORMANCE REQUIREMENTS.—The
14 Secretary shall, by regulation, establish security perform-
15 ance requirements for the security plans required for pro-
16 viders of covered transportation. The regulations shall—

17 (1) require separate and increasingly stringent
18 security performance requirements for security plans
19 as the level of risk associated with the tier increases;
20 and

21 (2) permit each provider of covered transpor-
22 tation submitting a security plan to select a com-
23 bination of security measures that satisfy the secu-
24 rity performance requirements established by the
25 Secretary under this subsection.

1 (g) DEADLINE FOR REVIEW PROCESS.—Not later
2 than 12 months after the date of the issuance of the regu-
3 lations under subsection (a), the Secretary, in consultation
4 with the Secretary of Transportation, shall—

5 (1) review each vulnerability assessment and se-
6 curity plan submitted to the Secretary in accordance
7 with subsection (b);

8 (2) require amendments to any security plan
9 that does not meet the requirements of this section,
10 including the regulations issued under subsection
11 (a);

12 (3) approve any vulnerability assessment or se-
13 curity plan that meets the requirements of this sec-
14 tion, including such regulations; and

15 (4) review each security plan periodically there-
16 after.

17 (h) INTERIM SECURITY MEASURES.—The Secretary,
18 in consultation with the Secretary of Transportation, shall
19 require, during the period before the deadline established
20 under subsection (b), each provider of covered transpor-
21 tation required to submit a security plan under subsection
22 (b) to implement any necessary interim security measures
23 to deter, mitigate, and respond to, to the maximum extent
24 practicable, a transportation security incident with respect
25 to the covered transportation or a substantive threat of

1 such an incident until the security plan of the provider
2 is approved.

3 (i) NONDISCLOSURE OF INFORMATION.—

4 (1) IN GENERAL.—Nothing in this Act shall be
5 construed to require the disclosure of a vulnerability
6 assessment or a security plan of a provider of cov-
7 ered transportation to the extent that such informa-
8 tion is exempted from mandatory disclosure under
9 section 552 of title 5, United States Code.

10 (2) OTHER OBLIGATIONS UNAFFECTED.—Noth-
11 ing in this section shall affect any obligation of the
12 provider of covered transportation to submit or
13 make available information to covered transportation
14 employees, nonprofit employee labor organizations,
15 or a Federal, State, or local government agency
16 under, or otherwise to comply with, any other law.

17 (3) SUBMISSION OF INFORMATION TO CON-
18 GRESS.—Nothing in this section shall be construed
19 as authorizing the withholding of any information
20 from Congress.

21 (4) DISCLOSURE OF INDEPENDENTLY FUR-
22 NISHED INFORMATION.—Nothing in this section
23 shall be construed as affecting any authority or obli-
24 gation of a Federal agency to disclose any record or
25 information that the Federal agency obtains from a

1 provider of covered transportation under any other
2 law.

3 (j) PENALTIES.—

4 (1) ADMINISTRATIVE PENALTIES.—

5 (A) IN GENERAL.—The Secretary may im-
6 pose an administrative penalty of not more than
7 \$100,000 for failure to comply with this sec-
8 tion, including regulations issued under sub-
9 section (a).

10 (B) NOTICE AND OPPORTUNITY TO RE-
11 QUEST HEARING.—Before imposing a penalty
12 under subparagraph (A), the Secretary shall
13 provide to the person against whom the penalty
14 is to be imposed—

15 (i) written notice of the proposed pen-
16 alty; and

17 (ii) the opportunity to request, not
18 later than 30 days after the date on which
19 the person receives the notice, a hearing on
20 the proposed penalty.

21 (C) REGULATIONS.—The Secretary may
22 issue regulations establishing the procedures for
23 administrative hearings and appropriate review
24 of penalties imposed under this Act, including
25 deadlines.

1 (2) CIVIL PENALTIES.—

2 (A) IN GENERAL.—The Secretary may
3 bring an action in a United States district court
4 against any provider of covered transportation
5 that violates or fails to comply with this Act, in-
6 cluding regulations issued under subsection (a),
7 or a security plan approved by the Secretary
8 under this section.

9 (B) RELIEF.—In any action under this
10 Act, a court may issue an order for injunctive
11 relief and may impose a civil penalty of not
12 more than \$75,000 for each day on which a vio-
13 lation occurs or a failure to comply continues.

14 (3) CRIMINAL PENALTIES.—A provider of cov-
15 ered transportation who intentionally violates this
16 section, including regulations issued under sub-
17 section (a), shall be fined not more than \$50,000 for
18 each day of such violation, imprisoned for not more
19 than 2 years, or both.

20 (k) EXISTING PROCEDURES, PROTOCOLS AND
21 STANDARDS.—

22 (1) DETERMINATION.—In response to a peti-
23 tion by a provider of covered transportation or at
24 the discretion of the Secretary, the Secretary may
25 recognize existing procedures, protocols, and stand-

1 ards of a provider of covered transportation that the
2 Secretary determines to meet all or part of the re-
3 quirements of this section, including regulations
4 issued under subsection (a), regarding vulnerability
5 assessments and security plans.

6 (2) ELECTION.—Upon review and written de-
7 termination by the Secretary that existing proce-
8 dures, protocols, or standards of a provider of cov-
9 ered transportation satisfy all of the requirements of
10 this section, including regulations issued under sub-
11 section (a), the provider may elect to comply with
12 those procedures, protocols, or standards instead of
13 the requirements of this section.

14 (3) PARTIAL APPROVAL.—If the Secretary de-
15 termines that the existing procedures, protocols, or
16 standards of a provider of covered transportation
17 satisfy only part of the requirements of this section,
18 including regulations issued under subsection (a),
19 the Secretary may accept those submissions, but
20 shall require submission by the provider of any addi-
21 tional information relevant to vulnerability assess-
22 ments and security plans of the provider to ensure
23 that the remaining requirements of this section are
24 fulfilled.

1 (4) NOTIFICATION.—If the Secretary deter-
2 mines that particular existing procedures, protocols,
3 or standards of a provider of covered transportation
4 under this subsection do not satisfy the require-
5 ments of this section, including regulations issued
6 under subsection (a), the Secretary shall provide to
7 such provider a written notification that includes an
8 explanation of the reasons why the determination
9 could not be made.

10 (5) REVIEW.—Nothing in this subsection shall
11 relieve the Secretary of the obligation—

12 (A) to review the vulnerability assessment
13 and security plan submitted by a provider of
14 covered transportation under this section; and

15 (B) to approve or disapprove each submis-
16 sion on an individual basis.

17 (1) PERIODIC REVIEW BY PROVIDER OF COVERED
18 TRANSPORTATION REQUIRED.—

19 (1) SUBMISSION OF REVIEW.—Not later than 3
20 years after the date on which a vulnerability assess-
21 ment or security plan required to be submitted to
22 the Secretary under subsection (b) is submitted, and
23 at least once every 5 years thereafter (or on such a
24 schedule as the Secretary may establish by regula-
25 tion), the provider of covered transportation who

1 submitted the vulnerability assessment or security
2 plan shall also submit to the Secretary a review of
3 the adequacy of the vulnerability assessment or secu-
4 rity plan that includes a description of any changes
5 made to the vulnerability assessment or security
6 plan.

7 (2) REVIEW OF REVIEW.—The Secretary
8 shall—

9 (A) ensure that a review required under
10 paragraph (1) is submitted not later than the
11 applicable date; and

12 (B) not later than 6 months after the date
13 on which a review is submitted under para-
14 graph (1), review the review and notify the pro-
15 vider of covered transportation submitting the
16 review of the Secretary’s approval or dis-
17 approval of the covered provider’s review.

18 (m) SHARED FACILITIES.—The Secretary, in con-
19 sultation with the Secretary of Transportation, may per-
20 mit under this section the development and implementa-
21 tion of coordinated vulnerability assessments and security
22 plans to the extent 2 or more providers of covered trans-
23 portation have shared facilities (such as tunnels, bridges,
24 or stations, or facilities) that are geographically close or
25 otherwise co-located.

1 **SEC. 6. INFORMATION SHARING PLAN.**

2 (a) IN GENERAL.—Not later than 90 days after the
3 date of enactment of this Act, the Secretary, in consulta-
4 tion with the Secretary of Transportation, shall develop
5 and submit to the appropriate congressional committees
6 a railroad, public transportation, and over-the-road bus in-
7 formation sharing plan to ensure the development of both
8 tactical and strategic intelligence products pertaining to
9 the threats and vulnerabilities to covered transportation
10 for dissemination to Federal, State, and local agencies,
11 tribal governments, and appropriate stakeholders.

12 (b) CONTENT OF PLAN.—The plan submitted under
13 subsection (a) shall include—

14 (1) a description of how intelligence analysts in
15 the Transportation Security Administration are co-
16 ordinating with other intelligence analysts in the De-
17 partment and other Federal, State, and local agen-
18 cies;

19 (2) reasonable deadlines for the completion of
20 any organizational changes within the Department
21 to accommodate implementation of the plan; and

22 (3) a description of resource needs for fulfilling
23 the plan.

24 (c) UPDATES.—

25 (1) CERTIFICATION OF IMPLEMENTATION.—
26 After the plan is submitted under subsection (a), the

1 Secretary shall certify to the appropriate congres-
2 sional committees when the plan has been imple-
3 mented.

4 (2) ANNUAL REPORTS.—After the Secretary
5 provides the certification under paragraph (1), the
6 Secretary shall provide a report to the appropriate
7 congressional committees each year thereafter on the
8 following:

9 (A) The number and brief description of
10 each railroad, public transportation, and over-
11 the-road bus intelligence report created and dis-
12 seminated under the plan.

13 (B) The classification of each report as
14 tactical or strategic.

15 (C) The numbers of different government,
16 law enforcement, and public or private sector
17 partners who were provided with each intel-
18 ligence product.

19 (d) ANNUAL SURVEYS.—The Secretary shall conduct
20 an annual survey of the satisfaction of each of the recipi-
21 ents of railroad, public transportation, and over-the-road
22 bus intelligence reports created and disseminated under
23 the plan and include the results of the survey as part of
24 the corresponding annual report provided under sub-
25 section (c)(2).

1 (e) SECURITY CLEARANCES.—The Department shall
2 assist the appropriate Federal, State, regional, local, and
3 tribal authorities, in addition to appropriate stakeholders,
4 in obtaining the security clearances needed to receive clas-
5 sified covered transportation security information as nec-
6 essary if this information cannot be disseminated in an
7 unclassified format.

8 (f) CLASSIFICATION OF MATERIAL.—To the greatest
9 extent possible, the Department shall provide appropriate
10 stakeholders with information in an unclassified format.

11 **SEC. 7. RAIL SECURITY ASSISTANCE.**

12 (a) IN GENERAL.—The Secretary, in consultation
13 with the Secretary of Transportation, shall establish a pro-
14 gram for making grants to eligible entities for security im-
15 provements described in subsection (b).

16 (b) USES OF FUNDS.—A recipient of a grant under
17 this section shall use the grant funds for one or more of
18 the following:

19 (1) Perimeter protection systems, including ac-
20 cess control, installation of improved lighting, fence-
21 ing, and barricades at railroad facilities.

22 (2) Technologies for reduction of rail car vul-
23 nerability.

1 (3) Passenger railroad station security redevelop-
2 ment and capital improvement projects that the
3 Secretary determines enhance rail station security.

4 (4) Security improvements to passenger rail-
5 road stations and other railroad transportation in-
6 frastructure.

7 (5) Tunnel protection systems.

8 (6) Evacuation improvements.

9 (7) Inspection technologies, including verified
10 visual inspection technologies using hand-held read-
11 ers and discs.

12 (8) Communications equipment, including
13 equipment that is interoperable with Federal, State,
14 and local agencies and tribal governments.

15 (9) Chemical, biological, radiological, or explo-
16 sive detection, including canine patrols for such de-
17 tection.

18 (10) Surveillance equipment.

19 (11) Cargo or passenger screening equipment.

20 (12) Emergency response equipment, including
21 fire suppression and decontamination equipment,
22 personal protective equipment, and defibrillators.

23 (13) Global positioning or tracking and recovery
24 equipment.

1 (14) Redundant critical operations control sys-
2 tems.

3 (15) Operating and capital costs associated
4 with security awareness, preparedness, and response
5 training, including training under section 11 and
6 training developed by universities and institutions of
7 higher education and by nonprofit employee labor
8 organizations, for front-line railroad employees.

9 (16) Live or simulated exercises described in
10 section 12.

11 (17) Overtime reimbursement for additional se-
12 curity personnel during periods of heightened secu-
13 rity as determined by the Secretary.

14 (18) Public awareness campaigns for enhanced
15 rail security.

16 (19) Operational costs for personnel assigned to
17 full-time security or counterterrorism duties related
18 to rail transportation.

19 (20) Such other security improvements as the
20 Secretary considers appropriate.

21 (c) SECURITY IMPROVEMENT PRIORITIES.—In estab-
22 lishing guidelines for applications for grants under this
23 section, the Secretary shall establish a list in order of pri-
24 ority regarding uses of funds for grant recipients under
25 this section.

1 (d) MULTIYEAR AWARDS.—Pursuant to this section,
2 the Secretary may issue multi-year grants for not longer
3 than a 5-year period.

4 (e) LETTERS OF INTENT.—

5 (1) ISSUANCE.—The Secretary may issue a let-
6 ter of intent to a recipient of a grant under this sec-
7 tion, to commit funding from future budget author-
8 ity of an amount, not more than the Federal Gov-
9 ernment’s share of the project’s cost, for a capital
10 improvement project.

11 (2) SCHEDULE.—The letter of intent under this
12 subsection shall establish a schedule under which the
13 Secretary will reimburse the recipient for the Fed-
14 eral Government’s share of the project’s costs, as
15 amounts become available, if the recipient, after the
16 Secretary issues that letter, carries out the project
17 without receiving amounts under a grant issued
18 under this section.

19 (3) NOTICE TO SECRETARY.—A recipient that
20 has been issued a letter of intent under this section
21 shall notify the Secretary of the recipient’s intent to
22 carry out a project before the project begins.

23 (4) NOTICE TO CONGRESS.—The Secretary
24 shall transmit to the appropriate Congressional
25 Committees a written notification at least 3 days be-

1 fore the issuance of a letter of intent under this sub-
2 section.

3 (5) LIMITATIONS.—A letter of intent issued
4 under this subsection is not an obligation of the
5 Federal Government under section 1501 of title 31,
6 United States Code, and the letter is not deemed to
7 be an administrative commitment for financing. An
8 obligation or administrative commitment may be
9 made only as amounts are provided in authorization
10 and appropriations laws.

11 (6) STATUTORY CONSTRUCTION.—Nothing in
12 this section shall be construed to prohibit the obliga-
13 tion of amounts pursuant to a letter of intent under
14 this section in the same fiscal year as the letter of
15 intent is issued.

16 (f) ELIGIBILITY.—

17 (1) IN GENERAL.—Eligible entities for a grant
18 under this section may include State, local, and trib-
19 al governmental entities, as well as infrastructure
20 owners, including railroad carriers, private entities
21 and public-private entities, or their designees.

22 (2) PROJECT ELIGIBILITY.—A recipient of a
23 grant under this section may use grant funds only
24 for permissible uses under subsection (b) to further
25 a rail security plan developed, submitted to, and ap-

1 proved by the Secretary, in consultation with the
2 Secretary of Transportation, under section 5.

3 (g) FEDERAL SHARE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), a grant for a project under this
6 section shall be for 80 percent of the net cost of the
7 project.

8 (2) SMALL PROJECT EXCEPTION.—If a grant
9 under this section is for a project with a net cost of
10 \$25,000 or less, the Federal share for the grant
11 shall be for 100 percent of such cost.

12 (3) NATIONAL SECURITY EXCEPTION.—If the
13 Secretary determines, upon written notice to the ap-
14 propriate congressional committees, that a higher
15 Federal share for a grant under this section is nec-
16 essary to respond to an urgent threat to national se-
17 curity, the Secretary may increase the Federal share
18 for the grant to up to 100 percent of the net cost
19 of the project.

20 (4) APPLICABILITY.—This subsection shall only
21 apply to freight rail carriers.

22 (h) SUBJECT TO CERTAIN STANDARDS.—The Sec-
23 retary shall require a recipient of a grant under this sec-
24 tion and section 10 to comply with the standards of sec-
25 tion 24312 of title 49, United States Code, as in effect

1 on January 1, 2007, with respect to the project in the
2 same manner as the National Railroad Passenger Cor-
3 poration is required to comply with such standards for
4 construction work financed under an agreement made
5 under section 24308(a) of that title.

6 (i) LIMITATION ON USES OF FUNDS.—A grant made
7 under this section may not be used to—

8 (1) supplant State or local funds for activities
9 described in subsection (c); and

10 (2) make any State or local government cost-
11 sharing contribution under any other law.

12 (j) ANNUAL REPORTS.—Each recipient of a grant
13 under this section shall report annually to the Secretary
14 on the use of grant funds.

15 (k) GUIDELINES.—Before distribution of funds to re-
16 cipients of grants under this section, the Secretary, in con-
17 sultation with the Secretary of Transportation, shall issue
18 guidelines to ensure that recipients of grants under this
19 section use small, minority, women-owned, and disadvan-
20 taged businesses as contractors or subcontractors to the
21 extent practicable.

22 (l) MONITORING.—The Secretary shall be responsible
23 for monitoring the manner in which the grants are used.

24 (m) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated to the Secretary \$600,000,000 for each
3 of fiscal years 2008 through 2011 for making grants
4 under this section.

5 (2) PERIOD OF AVAILABILITY.—Sums appro-
6 priated to carry out this section shall remain avail-
7 able until expended.

8 **SEC. 8. PUBLIC TRANSPORTATION SECURITY ASSISTANCE.**

9 (a) IN GENERAL.—The Secretary, in consultation
10 with the Secretary of Transportation, shall establish a pro-
11 gram for making grants to an eligible public transpor-
12 tation designated recipient for security improvements de-
13 scribed in subsection (b).

14 (b) USES OF FUNDS.—A recipient of a grant under
15 subsection (a) shall use the grant funds for one or more
16 of the following:

17 (1) Perimeter protection systems, including ac-
18 cess control, installation improved lighting, fencing,
19 and barricades.

20 (2) Security improvements to stations and other
21 public transportation infrastructure.

22 (3) Tunnel protection systems.

23 (4) Evacuation improvements.

1 (5) Inspection technologies, including verified
2 visual inspection technologies using hand-held read-
3 ers and discs.

4 (6) Communications equipment, including mo-
5 bile service equipment to provide access to emer-
6 gency services in an underground fixed guideway
7 system.

8 (7) Chemical, biological, or radiological or ex-
9 plosive detection, including canine patrols for such
10 detection.

11 (8) Surveillance equipment.

12 (9) Emergency response equipment, including
13 fire suppression and decontamination equipment,
14 personal protective equipment, and defibrillators.

15 (10) Global positioning or tracking and recovery
16 equipment.

17 (11) Redundant critical operations control sys-
18 tems.

19 (12) Live or simulated exercises described in
20 section 12.

21 (13) Public awareness campaigns for enhanced
22 public transportation security.

23 (14) Operating and capital costs associated
24 with security awareness, preparedness, and response
25 training, including training under section 11 and

1 training developed by universities and institutions of
2 higher education and by nonprofit employee labor
3 organizations, for front-line public transportation
4 employees.

5 (15) Overtime reimbursement for additional se-
6 curity personnel during periods of heightened secu-
7 rity as determined by the Secretary.

8 (16) Operational costs for personnel assigned to
9 full-time security or counterterrorism duties related
10 to public transportation.

11 (17) Such other security improvements as the
12 Secretary considers appropriate.

13 (c) ELIGIBILITY.—

14 (1) IN GENERAL.—Eligible entities for a grant
15 under this section may include public transportation
16 agencies and State, local, and tribal governmental
17 entities that provide security or counterterrorism re-
18 lated services to public transportation.

19 (2) PROJECT ELIGIBILITY.—A recipient of a
20 grant under this section may use grant funds only
21 for permissible uses under subsection (b) to further
22 a public transportation security plan developed, sub-
23 mitted to, and approved by the Secretary in con-
24 sultation with the Secretary of Transportation,
25 under section 5.

1 (d) SECURITY IMPROVEMENT PRIORITIES.—In estab-
2 lishing guidelines for applications for grants under this
3 section, the Secretary shall establish a list in order of pri-
4 ority regarding uses of funds for grant recipients under
5 this section.

6 (e) SUBJECT TO CERTAIN TERMS AND CONDI-
7 TIONS.—Except as otherwise specifically provided in this
8 section, a grant provided under this section shall be sub-
9 ject to the terms and conditions applicable to a grant
10 made under section 5307 of title 49, United States Code,
11 under effect on January 1, 2007, and such other terms
12 and conditions as are determined necessary by the Sec-
13 retary.

14 (f) LIMITATION ON USES OF FUNDS.—Grants made
15 under this section may not be used to—

16 (1) supplant State or local funds for activities
17 described in subsection (e); and

18 (2) make any State or local government cost-
19 sharing contribution under any other law.

20 (g) ANNUAL REPORTS.—Each recipient of a grant
21 under this section shall report annually to the Secretary
22 on the use of the grant funds.

23 (h) GUIDELINES.—Before distribution of funds to re-
24 cipients of grants under this section, the Secretary, in con-
25 sultation with the Secretary of Transportation, shall issue

1 guidelines to ensure that recipients of grants under this
2 section use small, minority, women-owned, and disadvan-
3 tagged businesses as contractors or subcontractors to the
4 extent practicable.

5 (i) MONITORING.—The Secretary shall be responsible
6 for monitoring the manner in which the grants are used.

7 (j) AUTHORIZATION OF APPROPRIATIONS.—

8 (1) IN GENERAL.—There are authorized to be
9 appropriated to the Secretary to make grants under
10 this section—

11 (A) \$775,000,000 for fiscal year 2008;

12 (B) \$825,000,000 for fiscal year 2009;

13 (C) \$880,000,000 for fiscal year 2010; and

14 (D) \$880,000,000 for fiscal year 2011.

15 (2) PERIOD OF AVAILABILITY.—Sums appro-
16 priated to carry out this section shall remain avail-
17 able until expended.

18 **SEC. 9. OVER-THE-ROAD BUS SECURITY ASSISTANCE.**

19 (a) IN GENERAL.—The Secretary, in consultation
20 with the Secretary of Transportation, shall establish a pro-
21 gram for making grants for eligible private operators pro-
22 viding transportation by an over-the-road bus for security
23 improvements described in subsection (b).

1 (b) USES OF FUNDS.—A recipient of a grant received
2 under subsection (a) shall use the grant funds for one or
3 more of the following:

4 (1) Constructing and modifying terminals, ga-
5 rages, facilities, or over-the-road buses to increase
6 their security.

7 (2) Protecting or isolating the driver of an over-
8 the-road bus.

9 (3) Acquiring, upgrading, installing, or oper-
10 ating equipment, software, or accessorial services for
11 collection, storage, or exchange of passenger and
12 driver information through ticketing systems or oth-
13 erwise and for information links with government
14 agencies.

15 (4) Installing cameras and video surveillance
16 equipment on over-the-road buses and at terminals,
17 garages, and over-the-road bus facilities.

18 (5) Establishing and improving an emergency
19 communications system linking drivers and over-the-
20 road buses to the recipient's operations center or
21 linking the operations center to law enforcement and
22 emergency personnel.

23 (6) Implementing and operating passenger
24 screening programs for weapons and explosives.

1 (7) Public awareness campaigns for enhanced
2 over-the-road bus security.

3 (8) Operating and capital costs associated with
4 security awareness, preparedness, and response
5 training, including training under section 11 and
6 training developed by universities and institutions of
7 higher education and by nonprofit employee labor
8 organizations, for front-line over-the-road bus em-
9 ployees.

10 (9) Chemical, biological, radiological, or explo-
11 sive detection, including canine patrols for such de-
12 tection.

13 (10) Overtime reimbursement for additional se-
14 curity personnel during periods of heightened secu-
15 rity as determined by the Secretary.

16 (11) Live or simulated exercises described in
17 section 12.

18 (12) Operational costs for personnel assigned to
19 full-time security or counterterrorism duties related
20 to over-the-road bus transportation.

21 (13) Such other improvements as the Secretary
22 considers appropriate.

23 (c) ELIGIBILITY.—

24 (1) IN GENERAL.—Eligible entities for a grant
25 under this section may include over-the-road bus

1 providers and State, local, and tribal governmental
2 entities that provide security or counterterrorism re-
3 lated services to over-the-road bus providers.

4 (2) PROJECT ELIGIBILITY.—A recipient of a
5 grant under this section may use grant funds only
6 for permissible uses under subsection (b) to further
7 an over-the-road bus security plan developed, sub-
8 mitted to, and approved by the Secretary, in con-
9 sultation with the Secretary of Transportation,
10 under section 5.

11 (d) SECURITY IMPROVEMENT PRIORITIES.—In estab-
12 lishing guidelines for applications for grants under this
13 section, the Secretary shall establish a list in order of pri-
14 ority regarding uses of funds for grant recipients under
15 this section.

16 (e) SUBJECT TO CERTAIN TERMS AND CONDI-
17 TIONS.—Except as otherwise specifically provided in this
18 section, a grant made under this section shall be subject
19 to the terms and conditions applicable to subrecipients
20 who provide intercity bus transportation under section
21 5311(f) of title 49, United States Code, and such other
22 terms and conditions as are determined necessary by the
23 Secretary.

24 (f) LIMITATION ON USES OF FUNDS.—A grant made
25 under this section may not be used to—

1 (1) supplant State or local funds for activities
2 described in subsection (e); and

3 (2) make any State or local government cost-
4 sharing contribution under any other law.

5 (g) ANNUAL REPORTS.—Each recipient of a grant
6 under this section shall report annually to the Secretary
7 and the Secretary of Transportation on the use of such
8 grant funds.

9 (h) GUIDELINES.—Before distribution of funds to re-
10 cipients of grants under this section, the Secretary, in con-
11 sultation with the Secretary of Transportation, shall issue
12 guidelines to ensure that recipients of grants under this
13 section use small, minority, women-owned, and disadvan-
14 taged businesses as contractors or subcontractors to the
15 extent practicable.

16 (i) MONITORING.—The Secretary shall be responsible
17 for monitoring the manner in which the grants are used.

18 (j) AUTHORIZATION.—

19 (1) IN GENERAL.—There is authorized to be
20 appropriated to the Secretary to make grants under
21 this section—

22 (A) \$12,000,000 for fiscal year 2008; and

23 (B) \$25,000,000 for each of fiscal years
24 2009 through 2011.

1 (2) PERIOD OF AVAILABILITY.—Sums appro-
2 priated to carry out this section shall remain avail-
3 able until expended.

4 **SEC. 10. FIRE AND LIFE SAFETY IMPROVEMENTS.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary of
7 Transportation for making grants to the National Rail-
8 road Passenger Corporation, hereinafter referred to as
9 “Amtrak”, for the purpose of carrying out projects to
10 make fire and life safety improvements to Amtrak tunnels
11 on the Northeast Corridor the following amounts:

12 (1) For the 6 tunnels in New York City, New
13 York, to provide ventilation, electrical, and fire safe-
14 ty technology improvements, emergency communica-
15 tion and lighting systems, and emergency access and
16 egress for passengers—

17 (A) \$25,000,000 for fiscal year 2008;

18 (B) \$25,000,000 for fiscal year 2009;

19 (C) \$25,000,000 for fiscal year 2010; and

20 (D) \$25,000,000 for fiscal year 2011.

21 (2) For the Baltimore & Potomac Tunnel and
22 the Union Tunnel in Baltimore, Maryland, to pro-
23 vide adequate drainage and ventilation, communica-
24 tion, lighting, standpipe, and passenger egress im-
25 provements—

- 1 (A) \$5,000,000 for fiscal year 2008;
2 (B) \$5,000,000 for fiscal year 2009;
3 (C) \$5,000,000 for fiscal year 2010; and
4 (D) \$5,000,000 for fiscal year 2011.

5 (3) For the Union Station tunnels in the Dis-
6 trict of Columbia to provide ventilation, communica-
7 tion, lighting, and passenger egress improvements—

- 8 (A) \$5,000,000 for fiscal year 2008;
9 (B) \$5,000,000 for fiscal year 2009;
10 (C) \$5,000,000 for fiscal year 2010; and
11 (D) \$5,000,000 for fiscal year 2011.

12 (b) AVAILABILITY OF AMOUNTS.—Amounts appro-
13 priated pursuant to this section shall remain available
14 until expended.

15 (c) GUIDELINES.—Before distribution of funds to re-
16 cipients of grants under this section, the Secretary of
17 Transportation shall issue guidelines to ensure that recipi-
18 ents of grants under this section use small, minority,
19 women-owned, and disadvantaged businesses as the con-
20 tractors or subcontractors to the extent practicable.

21 **SEC. 11. SECURITY TRAINING PROGRAM.**

22 (a) IN GENERAL.—Not later than 90 days after the
23 date of enactment of this Act, the Secretary, in consulta-
24 tion with the Secretary of Transportation, shall—

1 (1) develop security training programs to pre-
2 pare all railroad, public transportation, and over-the-
3 road bus workers, including front-line employees for
4 potential threat conditions; and

5 (2) issue detailed guidance for the program.

6 (b) CONSULTATION.—The Secretary shall develop the
7 guidance under subsection (a)(2) in consultation with—

8 (1) appropriate law enforcement, fire service,
9 security, and terrorism experts;

10 (2) representatives of providers of covered
11 transportation; and

12 (3) nonprofit employee labor organizations rep-
13 resenting railroad, public transportation, over-the-
14 road bus workers, and fire fighter workers.

15 (c) PROGRAM ELEMENTS.—The guidance developed
16 under subsection (a)(2) shall require security training pro-
17 grams described in subsection (a) to include, at a min-
18 imum, elements to address the following:

19 (1) Determination of the seriousness of any oc-
20 currence or threat.

21 (2) Crew and passenger communication and co-
22 ordination.

23 (3) Appropriate responses to defend oneself ,
24 including using nonlethal defense devises.

1 (4) Evacuation procedures for passengers and
2 workers, including individuals with disabilities.

3 (5) Live situational training exercises regarding
4 various threat conditions, including tunnel evacu-
5 ation procedures.

6 (6) Recognition and reporting of dangerous
7 substances and suspicious packages, persons, and
8 situations.

9 (7) Understanding security incident procedures,
10 including procedures for communicating with gov-
11 ernmental and nongovernmental emergency response
12 providers.

13 (8) Operation and maintenance of security
14 equipment and systems.

15 (9) Any other subject the Secretary considers
16 appropriate.

17 (d) REQUIRED PROGRAMS.—

18 (1) DEVELOPMENT AND SUBMISSION TO SEC-
19 RETARY.—Not later than 60 days after the Sec-
20 retary issues guidance under subsection (a)(2) in
21 final form, each provider of covered transportation
22 shall develop a security training program in accord-
23 ance with the guidance and submit the program to
24 the Secretary for approval.

1 (2) APPROVAL.—Not later than 60 days after
2 receiving a security training program under this sub-
3 section, the Secretary shall approve the program or
4 require the provider of covered transportation that
5 developed the program to make any revisions to the
6 program that the Secretary considers necessary for
7 the program to meet the guidance requirements.

8 (3) TRAINING.—Not later than 1 year after the
9 Secretary approves a security training program
10 under this subsection, the provider of covered trans-
11 portation that developed the program shall complete
12 the training of all workers covered under the pro-
13 gram.

14 (4) UPDATES.—The Secretary shall update the
15 training guidance issued under subsection (a)(2)
16 from time to time to reflect new or different security
17 threats and require providers of covered transpor-
18 tation to revise their programs accordingly and pro-
19 vide additional training to their workers.

20 (e) NATIONAL TRAINING PROGRAM.—The Secretary
21 shall ensure that the training program developed under
22 subsection (a) is a component of the National Training
23 Program established under section 648 of the Department
24 of Homeland Security Appropriations Act of 2007 (6
25 U.S.C. 748).

1 **SEC. 12. SECURITY EXERCISES.**

2 (a) IN GENERAL.—The Secretary, in consultation
3 with the Secretary of Transportation, shall establish a pro-
4 gram for conducting security exercises for covered trans-
5 portation for the purpose of assessing and improving the
6 capabilities of entities described in subsection (b) to pre-
7 vent, prepare for, mitigate against, respond to, and re-
8 cover from acts of terrorism involving covered transpor-
9 tation.

10 (b) COVERED ENTITIES.—Entities to be tested and
11 evaluated under the program shall include—

12 (1) Federal, State, and local agencies and tribal
13 governments;

14 (2) employees and managers of providers of
15 covered transportation;

16 (3) governmental and nongovernmental emer-
17 gency response providers and law enforcement per-
18 sonnel, including railroad and transit police; and

19 (4) any other organization or entity that the
20 Secretary determines appropriate.

21 (c) REQUIREMENTS.—The Secretary, in consultation
22 with the Secretary of Transportation, shall ensure that the
23 program—

24 (1) consolidates all existing security exercises
25 for covered transportation administered by the De-
26 partment and the Department of Transportation;

1 (2) requires, on a periodic basis at the facilities
2 of a provider of covered transportation, exercises to
3 be conducted that are—

4 (A) scaled and tailored to the needs of the
5 facilities;

6 (B) live, in the case of the most at-risk fa-
7 cilities to a terrorist attack;

8 (C) as realistic as practicable and based on
9 current risk assessments, including credible
10 threats, vulnerabilities, and consequences; and

11 (D) consistent with the National Incident
12 Management System, the National Response
13 Plan, the National Infrastructure Protection
14 Plan, the National Preparedness Guidance, the
15 National Preparedness Goal, and other such na-
16 tional initiatives;

17 (3) provides that exercises described in para-
18 graph (2) will be—

19 (A) evaluated against clear and consistent
20 performance measures;

21 (B) assessed to learn best practices, which
22 shall be shared with appropriate Federal, State,
23 local, and tribal officials, governmental and
24 nongovernmental emergency response providers,
25 law enforcement personnel, including railroad

1 and transit police, and appropriate stake-
2 holders; and

3 (C) followed by remedial action in response
4 to lessons learned;

5 (4) includes exercises involving covered trans-
6 portation at or near the international land borders
7 of the United States and in coordination with inter-
8 national stakeholders;

9 (5) involves individuals in neighborhoods
10 around the infrastructure of a provider of covered
11 transportation; and

12 (6) assists State and local governments and
13 providers of covered transportation in designing, im-
14 plementing, and evaluating exercises that conform to
15 the requirements of paragraph (2).

16 (d) REMEDIAL ACTION MANAGEMENT PROGRAM.—
17 The Secretary shall utilize the remedial action manage-
18 ment program of the Federal Emergency Management
19 Agency to—

20 (1) identify and analyze each exercise conducted
21 under the program for lessons learned and best
22 practices;

23 (2) disseminate lessons learned and best prac-
24 tices to participants in the program;

1 (3) monitor the implementation of lessons
2 learned and best practices by participants in the
3 program; and

4 (4) conduct remedial action tracking and long-
5 term trend analysis.

6 (e) NATIONAL TRAINING PROGRAM.—The Secretary
7 shall ensure that the training program developed under
8 subsection (a) is a component of the National Training
9 Program established under section 648 of the Department
10 of Homeland Security Appropriations Act of 2007 (6
11 U.S.C. 748).

12 **SEC. 13. SECURITY RESEARCH AND DEVELOPMENT.**

13 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-
14 MENT PROGRAM.—The Secretary shall carry out a re-
15 search and development program for the purpose of im-
16 proving the security of covered transportation.

17 (b) ELIGIBLE PROJECTS.—The research and develop-
18 ment program may include projects—

19 (1) to reduce the vulnerability of passenger
20 trains, stations, and equipment to explosives and
21 hazardous chemical, biological, and radioactive sub-
22 stances including the development of technology to
23 screen passengers in large numbers at peak com-
24 muting times with minimal interference and interrup-
25 tion;

- 1 (2) to test new emergency response and recovery
2 techniques and technologies;
- 3 (3) to develop improved freight railroad technologies,
4 including—
 - 5 (A) technologies for sealing or modifying
6 railroad tank cars;
 - 7 (B) automatic inspection of railroad cars;
 - 8 (C) communication-based train controls;
 - 9 (D) signal system integrity at switches;
 - 10 (E) emergency response training, including
11 training in a tunnel environment;
 - 12 (F) security and redundancy for critical
13 communications, electrical power, computer,
14 and train control systems; and
 - 15 (G) technologies for securing bridges and
16 tunnels;
- 17 (4) to test wayside detectors that can detect
18 tampering;
- 19 (5) to support enhanced security for the transportation
20 of hazardous materials by railroad;
- 21 (6) to mitigate damages in the event of a
22 cyberattack; and
- 23 (7) to address other vulnerabilities and risks
24 identified by the Secretary.

1 (c) COORDINATION WITH OTHER RESEARCH INITIA-
2 TIVES.—The Secretary shall—

3 (1) ensure that the research and development
4 program is consistent with the National Strategy for
5 Rail and Public Transportation Security developed
6 under section 3; and

7 (2) to the greatest extent practicable, coordi-
8 nate the research and development activities of the
9 Department with other ongoing research and devel-
10 opment security related initiatives, including re-
11 search being conducted by—

12 (A) the National Academy of Sciences;

13 (B) the Department of Transportation, in-
14 cluding university transportation centers and
15 other institutes, centers, and simulators funded
16 by the Department of Transportation;

17 (C) the Technical Support Working Group;

18 (D) other Federal departments and agen-
19 cies; and

20 (E) other Federal and private research lab-
21 oratories, research entities, and universities and
22 institutions of higher education including, His-
23 torically Black Colleges or Universities, and
24 Hispanic Serving Institution or Tribal Univer-
25 sity, with the capability to conduct both prac-

1 tical and theoretical research and technical sys-
2 tems analysis on subjects that include bridge,
3 tunnel, blast, and infrastructure protection;

4 (3) carry out any research and development
5 project authorized by this section through a reim-
6 bursable agreement with the appropriate agency or
7 entity official, if the agency or entity—

8 (A) is currently sponsoring a research and
9 development project in a similar area; or

10 (B) has a unique facility or capability that
11 would be useful in carrying out the project;

12 (4) award grants, cooperative agreements, con-
13 tracts, other transactions, or reimbursable agree-
14 ments to the entities described in paragraph (c)(2)
15 and shall adopt necessary procedures, including au-
16 dits, to ensure that awards made under this section
17 are expended in accordance with the purposes of this
18 title and the priorities and other criteria developed
19 by the Secretary; and

20 (5) make reasonable efforts to enter into memo-
21 randa of understanding, contracts, grants, coopera-
22 tive agreements, or other transactions with owners
23 and operators of freight and intercity passenger rail
24 and over-the-road bus facilities willing to contribute
25 both physical space and other resources.

1 (d) PRIVACY AND CIVIL RIGHTS AND CIVIL LIB-
2 ERTIES ISSUES.—

3 (1) CONSULTATION.—In carrying out research
4 and development projects under this section, the
5 Secretary shall consult with the Chief Privacy Offi-
6 cer of the Department and the Officer for Civil
7 Rights and Civil Liberties of the Department as ap-
8 propriate and in accordance with section 222 of the
9 Homeland Security Act of 2002 (6 U.S.C. 142).

10 (2) PRIVACY IMPACT ASSESSMENTS.—In ac-
11 cordance with sections 222 and 705 of the Home-
12 land Security Act of 2002 (6 U.S.C. 142; 345), the
13 Chief Privacy Officer shall conduct privacy impact
14 assessments and the Officer for Civil Rights and
15 Civil Liberties shall conduct reviews, as appropriate,
16 for research and development initiatives developed
17 under this section.

18 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated to the Secretary to carry
20 out this section—

- 21 (1) \$50,000,000 for fiscal year 2008;
22 (2) \$50,000,000 for fiscal year 2009; and
23 (3) \$50,000,000 for fiscal year 2010.
24 (4) \$50,000,000 for fiscal year 2011.

25 Such sums shall remain available until expended.

1 **SEC. 14. WHISTLEBLOWER PROTECTIONS.**

2 (a) IN GENERAL.—No covered individual may be dis-
3 charged, demoted, suspended, threatened, harassed, rep-
4 rimanded, investigated, or in any other manner discrimi-
5 nated against (including by a denial, suspension, or rev-
6 ocation of a security clearance or by any other security
7 access determination) if such discrimination is due, in
8 whole or in part, to any lawful act done, perceived to have
9 been done, or intended to be done by the covered indi-
10 vidual—

11 (1) to provide information, cause information to
12 be provided, or otherwise assist in an investigation
13 regarding any conduct which the covered individual
14 reasonably believes constitutes a violation of any
15 law, rule, or regulation relating to rail, public trans-
16 portation, or over-the-road-bus security, which the
17 covered individual reasonably believes constitutes a
18 threat to rail, public transportation, or over-the-
19 road-bus security, or which the covered individual
20 reasonably believes constitutes fraud, waste, or mis-
21 management of Government funds intended to be
22 used for rail, public transportation, or over-the-road-
23 bus security, if the information or assistance is pro-
24 vided to or the investigation is conducted by—

25 (A) by a Federal, State, or local regulatory
26 or law enforcement agency (including an office

1 of the Inspector General under the Inspector
2 General Act of 1978 (5 U.S.C. app.; Public
3 Law 95–452);

4 (B) any Member of Congress, any com-
5 mittee of Congress, or the Government Ac-
6 countability Office; or

7 (C) a person with supervisory authority
8 over the covered individual (or such other per-
9 son who has the authority to investigate, dis-
10 cover, or terminate misconduct);

11 (2) to file, cause to be filed, testify, participate
12 in, or otherwise assist in a proceeding or action filed
13 or about to be filed relating to an alleged violation
14 of any law, rule, or regulation relating to national or
15 homeland security; or

16 (3) to refuse to violate or assist in the violation
17 of any law, rule, or regulation relating to national or
18 homeland security.

19 (b) ENFORCEMENT ACTION.—

20 (1) IN GENERAL.—A covered individual who al-
21 leges discharge or other discrimination by any per-
22 son in violation of subsection (a) may seek relief
23 under subsection (c)—

24 (A) for covered individuals who are em-
25 ployees of the Department or the Department

1 of Transportation, by filing a complaint with
2 the Merit Systems Protection Board;

3 (B) for contractors or subcontractors of
4 the Department or Department of Transpor-
5 tation, by filing a complaint with their respec-
6 tive Inspector General;

7 (C) for all other covered individuals, by fil-
8 ing a complaint with the Secretary of Labor;
9 and

10 (D) if the Secretary of Labor, Merit Sys-
11 tem Protection Board, or the respective Inspec-
12 tor General has not issued a final decision not
13 later than 180 days after the filing of the com-
14 plaint, or in the event that a final order or deci-
15 sion is issued by the Secretary of Labor, Merit
16 System Protection Board, or the respective In-
17 spector General, whether within the 180-day pe-
18 riod or thereafter, when, not later than 90 days
19 after such an order or decision is issued, bring-
20 ing an original action at law or equity for de
21 novo review in the appropriate district court of
22 the United States, which shall have jurisdiction
23 over such an action without regard to the
24 amount in controversy, and which shall, at the

1 request of either party to such action, be tried
2 by the court with a jury.

3 (2) PROCEDURE.—

4 (A) IN GENERAL.—An action under para-
5 graph (1)(A) shall be governed under the rules
6 and procedures set forth in section 42121(b) of
7 title 49, United States Code.

8 (B) EXCEPTION.—Notification made under
9 section 42121(b)(1) of title 49, United States
10 Code, shall be made to the person named in the
11 complaint and to the person's employer.

12 (C) BURDENS OF PROOF.—An action
13 brought under paragraph (1)(B) shall be gov-
14 erned by the legal burdens of proof set forth in
15 section 42121(b) of title 49, United States
16 Code.

17 (D) STATUTE OF LIMITATIONS.—An action
18 under paragraph (1) shall be commenced not
19 later than 1 year after the date on which the
20 violation occurs.

21 (c) REMEDIES.—

22 (1) IN GENERAL.—A covered individual pre-
23 vailing in any action under subsection (b)(1) shall be
24 entitled to all relief necessary to make the covered
25 individual whole.

1 (2) DAMAGES.—Relief for any action under
2 paragraph (1) shall include—

3 (A) reinstatement with the same seniority
4 status that the covered individual would have
5 had, but for the discrimination;

6 (B) the amount of any backpay, with inter-
7 est;

8 (C) compensation for any special damages
9 sustained as a result of the discrimination, in-
10 cluding litigation costs, expert witness fees, and
11 reasonable attorney fees; and

12 (D) punitive damages in an amount not to
13 exceed the greater of 3 times the amount of any
14 compensatory damages awarded under this sec-
15 tion or \$5,000,000.

16 (d) USE OF STATE SECRETS PRIVILEGE.—If the
17 Government, in a court of competent jurisdiction, asserts
18 as a defense the privilege commonly referred to as the
19 “state secrets privilege” then—

20 (1) the parties will move expeditiously to settle
21 the case and the court shall grant the parties 60
22 days by which to reach settlement of the pending
23 matter to avoid disclosure of any sensitive govern-
24 ment information, including classified or sensitive in-
25 telligence information. The parties may certify to the

1 court that settlement cannot be reached before the
2 end of the 60-day period;

3 (2) if the parties cannot settle the matter and
4 the parties continue to litigate the matter, the par-
5 ties and court shall apply special procedures in order
6 to protect classified or secret information in a man-
7 ner consistent with sections 1 through 10 of the
8 Classified Information and Procedures Act, and shall
9 adhere to the Classified Information Procedures Act
10 (18 U.S.C. App.; Public Law 96–456; 4 Stat. 2025);
11 and

12 (3) if, in any action brought under subsection
13 (b)(1)(B), the Government asserts the state secrets
14 privilege and the assertion of such privilege either is
15 without merit or is asserted and causes undue delay
16 or hardship to the plaintiff, or prevents the plaintiff
17 from establishing a prima facie case in support of
18 the plaintiff's claim or from rebutting an affirmative
19 defense, then the court shall enter judgment for the
20 plaintiff and shall determine the relief to be granted.

21 (e) CRIMINAL PENALTIES.—

22 (1) IN GENERAL.—It shall be unlawful for any
23 person employing a covered individual to commit an
24 act prohibited by subsection (a). Any person who
25 willfully violates this section by terminating or retali-

1 ating against any covered individual who makes a
2 claim under this section shall be fined under title 18,
3 United States Code, imprisoned not more than 1
4 year, or both.

5 (2) REPORTING REQUIREMENT.—

6 (A) IN GENERAL.—The Attorney General
7 shall submit to the appropriate congressional
8 committees an annual report on the enforce-
9 ment of paragraph (1).

10 (B) CONTENTS.—Each such report shall—

11 (i) identify each case in which formal
12 charges under paragraph (1) were brought;

13 (ii) describe the status or disposition
14 of each such case; and

15 (iii) in any actions under subsection
16 (b)(1)(B) in which the covered individual
17 was the prevailing party or the substan-
18 tially prevailing party, indicate whether or
19 not any formal charges under paragraph
20 (1) have been brought and, if not, the rea-
21 sons therefor.

22 (f) NO PREEMPTION.—Nothing in this section pre-
23 empts or diminishes any other safeguards against dis-
24 crimination, demotion, discharge, suspension, threats, har-

1 assessment, reprimand, retaliation, or any other manner of
2 discrimination provided by Federal or State law.

3 (g) RIGHTS RETAINED BY COVERED INDIVIDUAL.—

4 Nothing in this section shall be deemed to diminish the
5 rights, privileges, or remedies of any covered individual
6 under any Federal or State law or under any collective
7 bargaining agreement. The rights and remedies in this
8 section may not be waived by any agreement, policy, form,
9 or condition of employment.

10 (h) DEFINITIONS.—In this section, the following defi-
11 nitions apply:

12 (1) COVERED INDIVIDUAL.—The term “covered
13 individual” means an employee of—

14 (A) the Department;

15 (B) the Department of Transportation;

16 (C) a contractor or subcontractor; and

17 (D) an employer within the meaning of
18 section 701(b) of the Civil Rights Act of 1964
19 (42 U.S.C. 2000e(b)) and who is a provider of
20 covered transportation.

21 (2) LAWFUL.—The term “lawful” means not
22 specifically prohibited by law, except that, in the
23 case of any information the disclosure of which is
24 specifically prohibited by law or specifically required
25 by Executive order to be kept secret in the interest

1 of national defense or the conduct of foreign affairs,
2 any disclosure of such information to any Member of
3 Congress, committee of Congress, or other recipient
4 authorized to receive such information, shall be
5 deemed lawful.

6 (3) CONTRACTOR.—The term “contractor”
7 means a person who has entered into a contract with
8 the Department, the Department of Transportation,
9 or a provider of covered transportation.

10 (4) EMPLOYEE.—The term “employee”
11 means—

12 (A) with respect to an employer referred to
13 in paragraph (1)(A) or (1)(B), an employee as
14 defined by section 2105 of title 5, United States
15 Code; and

16 (B) with respect to an employer referred to
17 in paragraph (1)(A) or (1)(B), any officer,
18 partner, employee, or agent.

19 (5) SUBCONTRACTOR.—The term “subcon-
20 tractor”—

21 (A) means any person, other than the con-
22 tractor, who offers to furnish or furnishes any
23 supplies, materials, equipment, or services of
24 any kind under a contract with the Depart-

1 ment, the Department of Transportation, or a
2 provider of covered transportation; and

3 (B) includes any person who offers to fur-
4 nish or furnishes general supplies to the Fed-
5 eral contractor or a higher tier subcontractor.

6 (6) PERSON.—The term “person” means a cor-
7 poration, partnership, State entity, business associa-
8 tion of any kind, trust, joint-stock company, or indi-
9 vidual.

10 **SEC. 15. INCREASE IN SURFACE TRANSPORTATION SECU-**
11 **RITY INSPECTORS.**

12 (a) IN GENERAL.—The Secretary shall increase the
13 total number of positions for full-time surface transpor-
14 tation security inspectors of the Department so that by
15 December 31, 2010, the total number of such positions
16 is at least 600.

17 (b) QUALIFICATIONS.—Surface transportation secu-
18 rity inspectors hired by the Secretary shall have at least
19 3 years experience in conducting inspections and investiga-
20 tions and engaging in testing security systems and any
21 other qualifications that the Secretary determines appro-
22 priate.

23 (c) ROLES AND RESPONSIBILITIES.—The Secretary,
24 in consultation with the Secretary of Transportation, shall

1 develop a standard operating procedure clearly defining
2 the relationship between—

3 (1) surface transportation security inspectors of
4 the Department;

5 (2) safety and security inspectors of the De-
6 partment of Transportation;

7 (3) State and local law enforcement officers;
8 and

9 (4) other law enforcement personnel, including
10 railroad and transit police.

11 (d) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary to carry
13 out subsection (a) such sums as may be necessary. Such
14 sums shall remain available until expended.

15 **SEC. 16. NATIONAL DOMESTIC PREPAREDNESS CONSOR-**
16 **TIUM.**

17 (a) IN GENERAL.—There is in the Department of
18 Homeland Security a National Domestic Preparedness
19 Consortium.

20 (b) MEMBERS.—The National Domestic Prepared-
21 ness Consortium that identifies, develops, tests, and deliv-
22 ers training to State, local, and tribal emergency response
23 providers, provides onsite and mobile training at the per-
24 formance and management and planning levels, and facili-

1 tates the delivery of awareness level training by the train-
2 ing partners of the Department shall consist of—

3 (1) the Center for Domestic Preparedness;

4 (2) the National Energetic Materials Research
5 and Testing Center, New Mexico Institute of Mining
6 and Technology;

7 (3) the National Center for Biomedical Re-
8 search and Training, Louisiana State University;

9 (4) the National Emergency Response and Res-
10 cue Training Center, Texas A&M University;

11 (5) the National Exercise, Test, and Training
12 Center, Nevada Test Site; and

13 (6) the Transportation Technology Center in
14 Pueblo, Colorado.

15 **SEC. 17. AUTHORIZATION OF VISIBLE INTERMODAL PRO-**
16 **TECTION RESPONSE TEAMS.**

17 The Secretary, acting through the Administrator of
18 the Transportation Security Administration, is authorized
19 to develop Visible Intermodal Protection Response (re-
20 ferred to in this section as “VIPR”) teams designed to
21 augment security for any mode of transportation at any
22 location within the United States. In forming a VIPR
23 team, the Secretary—

24 (1) may use any asset of the Department, in-
25 cluding Federal air marshals, surface transportation

1 security inspectors, canine detection teams, and ad-
2 vanced screening technology;

3 (2) has the discretion to determine, consistent
4 with ongoing security threats, when a VIPR should
5 be deployed, as well as the duration of the deploy-
6 ment in coordination with local security and law en-
7 forcement officials; and

8 (3) prior to deployments, shall consult with
9 local security and law enforcement officials in the ju-
10 risdiction where the VIPR Team is planned to de-
11 ploy, to develop and agree upon the appropriate op-
12 erating protocols and in order to educate those offi-
13 cials regarding the mission of the VIPR teams.

14 **SEC. 18. NATIONAL TRANSPORTATION SECURITY CENTER**
15 **OF EXCELLENCE.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
17 a National Transportation Security Center of Excellence
18 at an institution of higher education to conduct research
19 and education activities, and to develop or provide profes-
20 sional security training, including the training of rail and
21 public transportation employees and rail and public trans-
22 portation-related professionals, with emphasis on utiliza-
23 tion of intelligent transportation systems, technologies,
24 and architectures.

1 (b) CRITERIA.—The Secretary shall designate the
2 Center according to the following selection criteria:

3 (1) The demonstrated commitment of the insti-
4 tution to transportation security issues.

5 (2) The use of and experience with partnerships
6 with other institutions of higher education, Federal
7 laboratories, or other nonprofit laboratories.

8 (3) Capability to conduct both practical and
9 theoretical research and technical systems analysis.

10 (4) Utilization of intelligent transportation sys-
11 tem technologies and architectures.

12 (5) Ability to develop professional security
13 training programs.

14 (6) Capability and willingness to conduct edu-
15 cation of transportation security professionals.

16 (7) Such other criteria as the Secretary may
17 designate.

18 (c) CONSORTIUM.—

19 (1) EXPERIENCE.—The Consortium shall in-
20 clude universities and institutions of higher edu-
21 cation that have existing transportation programs.

22 (2) CERTAIN INCLUSIONS.—At least two of the
23 consortium colleges and universities associated with
24 the National Transportation Security Center of Ex-
25 cellence shall be an Historically Black College or

1 University, an Hispanic Serving Institution, or Trib-
2 al University, even if the primary institution is one
3 of the aforementioned institutions of higher edu-
4 cation.

5 (d) TRAINING.—If the consortium does include the
6 National Transit Institute, the Consortium shall work
7 with the National Transit Institute on training programs.

8 (e) FUNDING.—The Secretary shall provide such
9 funding as is necessary to the National Transportation Se-
10 curity Center of Excellence established under subsection
11 (a) to carry out this section.

12 **SEC. 19. TSA PERSONNEL LIMITATIONS.**

13 Any statutory limitation on the number of employees
14 in the Transportation Security Administration does not
15 apply to employees carrying out this Act.

16 **SEC. 20. HOMELAND SECURITY GRANTS.**

17 Notwithstanding any provision of this Act, all grants
18 distributed for security-related purposes pursuant to this
19 Act, shall be administered on the basis of risk by the Sec-
20 retary as the lead Federal official on transportation secu-
21 rity.

22 **SEC. 21. THREAT ASSESSMENT SCREENING.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, the Secretary shall implement a threat
25 assessment screening program, including name-based

1 checks against terrorist watch lists and immigration sta-
2 tus check, for all employees of covered transportation, that
3 is the same as the threat assessment screening program
4 required for facility employees and longshoremen by the
5 Commandant of the Coast Guard under Coast Guard No-
6 tice USCG-2006-24189 (71 Fed. Reg. 25066 (Friday,
7 April 28, 2006)).

8 **SEC. 22. BACKGROUND CHECKS FOR COVERED INDIVID-**
9 **UALS.**

10 (a) DEFINITIONS.—In this section, the following defi-
11 nitions apply:

12 (1) BACKGROUND CHECKS.—The term “back-
13 ground check” means a check of the following:

14 (A) Relevant criminal history databases.

15 (B) In the case of an alien (as defined in
16 the Immigration and Nationality Act (8 U.S.C.
17 1101(a)(3)), the relevant databases to deter-
18 mine the status of the alien under the immigra-
19 tion laws of the United States.

20 (2) COVERED INDIVIDUALS.—The term “cov-
21 ered individual” means an employee of—

22 (A) an employer, within the meaning of
23 section 701(b) of the Civil Rights Act of 1964
24 (42 U.S.C. 2000e(b)), who is a provider of cov-
25 ered transportation; or

1 (B) a contractor or subcontractor of such
2 an employer.

3 (b) REDRESS PROCESS.—If a provider of covered
4 transportation conducts background checks in order to
5 satisfy any rules, regulations, directives, or other guidance
6 issued by the Secretary to protect covered transportation
7 from the threat of terrorism, the provider of covered trans-
8 portation shall provide an adequate redress process.

9 (c) STANDARDS FOR REDRESS PROCESS.—

10 (1) IN GENERAL.—The Secretary shall ensure
11 that each provider of covered transportation imple-
12 ments a redress process in accordance with sub-
13 section (b) for covered individuals adversely im-
14 pacted by a background check described in sub-
15 section (b).

16 (2) STANDARDS.—The redress process shall be
17 modeled after the appeals and waiver process estab-
18 lished for hazmat drivers and transportation workers
19 at ports, as required by section 1515 of title 49,
20 Code of Federal Regulations.

21 (3) COMPONENTS.—The redress process shall
22 include the following:

23 (A) A waiver process that will allow a cov-
24 ered individual to demonstrate, through reha-
25 bilitation, or facts surrounding the conviction or

1 other mitigating factors, that the individual is
2 not a security risk.

3 (B) An appeal process during which a cov-
4 ered individual will have an opportunity to dem-
5 onstrate that the individual does not have a dis-
6 qualifying conviction either by—

7 (i) correcting outdated underlying
8 court records;

9 (ii) proving mistaken identity; or

10 (iii) establishing that the conviction
11 cannot serve as the basis for an adverse
12 employment decision in accordance with
13 the limitations contained in subsection (d).

14 (C) A proceeding providing an independent
15 review.

16 (D) A process to ensure compliance with
17 the requirements of this section.

18 (4) PROCEEDINGS PROVIDING AN INDE-
19 PENDENT REVIEW.—A covered individual who re-
20 quests a proceeding under paragraph (3)(C) shall
21 have the right to have waiver and appeal decisions
22 heard by an independent decisionmaker with the
23 ability to order reinstatement expeditiously or pro-
24 vide other remedy.

1 (5) PREVIOUS BACKGROUND CHECKS.—A cov-
2 ered individual subjected to and adversely affected
3 by a background check conducted by a provider of
4 covered transportation (or a contractor or subcon-
5 tractor of such a provider), in the period beginning
6 on June 23, 2006, and ending on the date of enact-
7 ment of this Act, to satisfy any rules, regulations,
8 directives, or other guidance issued by the Secretary
9 to protect covered transportation from the threat of
10 terrorism shall have an immediate right to a pro-
11 ceeding with an independent decisionmaker to deter-
12 mine if the adverse action was in compliance with
13 this section and shall have a right to immediate rein-
14 statement or other remedy if the background check
15 fails to comply with this section.

16 (d) LIMITATIONS.—

17 (1) IN GENERAL.—Subject to paragraph (2),
18 any rule, regulation, directive, or other guidance
19 issued by the Secretary regarding background checks
20 of covered individuals shall prohibit an employer
21 from making an adverse employment decision, in-
22 cluding removal or suspension, with respect to a cov-
23 ered individual based on—

24 (A) a felony conviction that occurred 7 or
25 more years ago;

1 (B) a conviction of any offense for which
2 the individual was released from incarceration 5
3 or more years ago; or

4 (C) any felony not listed in section
5 1572.103(b) of title 49, Code of Federal Regu-
6 lations.

7 (2) EXCEPTIONS.—The limitations contained in
8 paragraph (1) shall not apply to a covered individual
9 who has been convicted of any of the following:

10 (A) Treason (or conspiracy to commit trea-
11 son).

12 (B) Espionage (or conspiracy to commit
13 espionage).

14 (C) Sedition (or conspiracy to commit sedi-
15 tion).

16 (D) Any crime listed in section 2331 of
17 title 18, United States Code (or conspiracy to
18 commit such a crime).

19 (e) STATUTORY CONSTRUCTION.—Nothing in this
20 section shall be construed to affect the process for review
21 established under section 70105(e) of title 46, United
22 States Code, including regulations issued pursuant to such
23 section.

1 **SEC. 23. PENALTIES.**

2 (a) REGULATIONS AND ORDERS OF THE SEC-
3 RETARY.—Section 114 of title 49, United States Code, is
4 amended by adding at the end the following:

5 “(u) GENERAL CIVIL PENALTIES AND ENFORCE-
6 MENT OF REGULATIONS AND ORDERS OF THE SEC-
7 RETARY OF HOMELAND SECURITY.—

8 “(1) APPLICATION.—This subsection applies to
9 the enforcement of regulations prescribed, and or-
10 ders issued, by the Secretary of Homeland Security
11 under a provision of chapter 701 of title 46 and this
12 title (other than chapter 449) (in this subsection re-
13 ferred to as an ‘applicable provision of this title’).
14 Penalties for violation of regulations prescribed, and
15 orders issued, by the Secretary of Homeland Secu-
16 rity under a provision of chapter 449 are provided
17 under chapter 463.

18 “(2) GENERAL CIVIL PENALTIES.—

19 “(A) MAXIMUM CIVIL PENALTIES.—A per-
20 son is liable to the United States Government
21 for a civil penalty of not more than \$10,000 for
22 a violation of a regulation prescribed, or order
23 issued, by the Secretary of Homeland Security
24 under an applicable provision of this title.

1 “(B) SEPARATE VIOLATIONS.—A separate
2 violation occurs under this paragraph for each
3 day the violation continues.

4 “(3) ADMINISTRATIVE IMPOSITION OF CIVIL
5 PENALTIES.—

6 “(A) IN GENERAL.—The Secretary of
7 Homeland Security may impose a civil penalty
8 for a violation of a regulation prescribed, or
9 order issued, under an applicable provision of
10 this title. The Secretary of Homeland Security
11 shall give written notice of the finding of a vio-
12 lation and the penalty.

13 “(B) CIVIL ACTIONS TO COLLECT PEN-
14 ALTIES.—In a civil action to collect a civil pen-
15 alty imposed by the Secretary under this para-
16 graph, the issues of liability and the amount of
17 the penalty may not be reexamined.

18 “(C) EXCLUSIVE JURISDICTION OF DIS-
19 TRICT COURTS.—Notwithstanding subpara-
20 graph (A) of this paragraph, the district courts
21 of the United States have exclusive jurisdiction
22 of a civil action involving a penalty that the
23 Secretary initiates if—

24 “(i) the amount in controversy is
25 more than—

1 “(I) \$400,000 if the violation
2 was committed by a person other than
3 an individual or small business con-
4 cern; or

5 “(II) \$50,000 if the violation was
6 committed by an individual or small
7 business concern;

8 “(ii) the action is in rem or another
9 action in rem based on the same violation
10 has been brought; or

11 “(iii) another action has been brought
12 for an injunction based on the same viola-
13 tion.

14 “(D) MAXIMUM CIVIL PENALTIES IMPOSED
15 BY THE SECRETARY.—The maximum civil pen-
16 alty the Secretary may impose under this para-
17 graph is—

18 “(i) \$400,000 if the violation was
19 committed by a person other than an indi-
20 vidual or small business concern; or

21 “(ii) \$50,000 if the violation was com-
22 mitted by an individual or small business
23 concern.

24 “(E) NOTICE AND OPPORTUNITY TO RE-
25 QUEST HEARING.—Before imposing a penalty

1 under this section the Secretary shall provide to
2 the person against whom the penalty is to be
3 imposed—

4 “(i) written notice of the proposed
5 penalty; and

6 “(ii) the opportunity to request, not
7 later than 30 days after the date on which
8 the person receives the notice, a hearing on
9 the proposed penalty.

10 “(4) COMPROMISE AND SETOFF.—

11 “(A) COMPROMISE.—The Secretary may
12 compromise the amount of a civil penalty im-
13 posed under this subsection.

14 “(B) SETOFF.—The Government may de-
15 duct the amount of a civil penalty imposed or
16 compromised under this subsection from
17 amounts it owes the person liable for the pen-
18 alty.

19 “(5) INVESTIGATIONS AND PROCEEDINGS.—The
20 provisions set forth in chapter 461 shall be applica-
21 ble to investigations and proceedings brought under
22 this subsection to the same extent that they are ap-
23 plicable to investigations and proceedings brought
24 with respect to aviation security duties designated to
25 be carried out by the Secretary.

1 “(6) NONAPPLICATION.—

2 “(A) PERSONS SUBJECT TO PENALTIES
3 DETERMINED BY THE SECRETARY OF DE-
4 FENSE.—Paragraphs (1) through (4) of this
5 subsection do not apply to the following per-
6 sons, who shall be subject to penalties as deter-
7 mined by the Secretary of Defense or the Sec-
8 retary’s designee:

9 “(i) The transportation of personnel
10 or shipments of materials by contractors
11 where the Department of Defense has as-
12 sumed control and responsibility.

13 “(ii) A member of the Armed Forces
14 of the United States when performing offi-
15 cial duties.

16 “(iii) A civilian employee of the De-
17 partment of Defense when performing offi-
18 cial duties.

19 “(B) POSTAL SERVICE; DEPARTMENT OF
20 DEFENSE.—In this subsection, the term ‘per-
21 son’ does not include—

22 “(i) the United States Postal Service;

23 or

24 “(ii) the Department of Defense.

1 “(7) SMALL BUSINESS CONCERN DEFINED.—
2 The term ‘small business concern’ has the meaning
3 given that term in section 3 of the Small Business
4 Act (15 U.S.C. 632).”.

5 (b) CONFORMING AMENDMENT.—Section
6 46301(a)(4) of title 49, United States Code, is amended
7 by striking “or another requirement under this title ad-
8 ministered by the Under Secretary of Transportation for
9 Security”.

○